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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
Regarding Multiple Address Systems )

WT Docket No. 97-81

To: The Commission

PETITION OF MICROWAVE DATA SYSTEMS FOR COMMENCEMENT OF  
LICENSING IN THE 932/941 MHz BAND

Microwave Data Systems, Inc. (MDS), hereby requests the Commission to commence the immediate licensing of multiple address microwave systems (MASs) in the 932/941 MHz bands.

Background

MDS has filed comments in this proceeding and, in the interest of brevity, it will not burden the record with a lengthy reiteration of its interest and positions on the issues. MDS is a leading manufacturer and vendor of MAS equipment to the nation's public safety and infrastructure companies. MDS' position has been that thousands of speculative applications have tainted the Commission's efforts to relieve the long-standing shortage of MAS spectrum, which relief could be granted by licensing systems in the 932/941 MHz band. MDS has opposed the use of auctions and territory licensing and has urged the Commission to proceed with the job of processing applications and issuing licenses to the nation's public safety and infrastructure companies.

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## The Commission Must Implement the Balanced Budget Act of 1997

Much of the debate in this proceeding has concerned the question of whether or not MAS licenses are used by primarily commercial systems. Until recently, if the answer was that MAS systems are primarily commercial in nature, then these licenses could be auctioned by the Commission. Last August, however, the Balanced Budget Act of 1997 was enacted. This act extended the FCC's authority to employ auctions in the licensing process. It also eliminated the requirement that the license be for a subscriber-based service. The Act directed the FCC to conduct an auction whenever "mutually exclusive applications are accepted for any initial license or construction permit (emphasis added)," with one major exemption.

The exemption contained in the statute is for "public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that (1) are used to protect the safety of life, health, or property; and (2) are not made commercially available to the public."

According to the conference report that accompanied this legislation, "the exemption from competitive bidding authority for 'public safety radio services' includes 'private internal radio services' used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by

these entities protect the safety of life, health, or property and are not made commercially available to the public." These entities are the traditional users of MAS systems and have always been the overwhelming majority of MAS users.

The FCC is obliged to comply with the law immediately. There is no accommodation for ongoing rule making proceedings nor any suggestion that the law applies only to future licensing activities. Congress has given the Commission instructions to exempt from auctions applications from utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, state and local governments, emergency road services and other entities who can show that their internal communications protect the safety of life, health or property without being offered to the public on a commercial basis.

It has been over fifteen years since the Commission proposed to make the 932/941 MHz band available for licensing. (See Notice of Proposed Rule Making in Gen. Docket No. 82-243, 47 Fed. Reg. 23491, May 28, 1982.) Since Congress has mandated that auctions are not to be used in the licensing process for public safety and infrastructure companies, the last obstacle to the commencement of licensing of these entities has been cleared.

### Proposal for Immediate Licensing

The spectrum has been allocated. The licensing process and service rules that pertain to the other MAS bands can govern site-licensed stations in the 932/941 MHz band as well.

Accordingly, MDS submits that, based on enactment of the 1997 Budget Act, the Commission can and should:

- Terminate the non-commercial aspects of this proceeding without adopting territory licensing or auctions for the existing MAS bands.
- Incorporate the 932/941 MHz band into the existing MAS regulations.
- Based on the pattern of actual licensing and construction of MAS systems over the last five years<sup>1</sup>, create a pool of 25 MAS channels in the 932/941 MHz band for application by public safety entities, utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, state and local governments, emergency road services and other companies that certify that these channels will be used for internal communications to protect the safety of life, health or property without being offered to the public on a commercial basis. Licensing to be on a site-by-site basis.

Again, based on the pattern of actual licensing and construction of MAS systems over the last five years, create a reserve pool of 15 MAS channels in the 932/941 MHz band for eventual licensing by auction to commercial users and licensing to federal agencies following the completion of any additional rule making that may be necessary for these specific channels. Licensing to be on a territory basis.

- Announce the acceptance of applications from public safety and infrastructure companies for licenses on the 25 MAS channels in the 932/941 MHz band that have been designated for their use.

#### Resolution of Mutual Exclusivity

Congress, in the 1997 Budget Act, terminated the Commission's authority to use lotteries to issue licenses in mutual exclusivity situations. This raises the question of how applications from exempt entities, that would be considered to be mutually exclusive, should be resolved<sup>2</sup>.

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<sup>1</sup>

See our comments in this proceeding, dated April 21, 1997, which point out that our sales records reflect that the vast majority of sales were for private, non-commercial users.

<sup>2</sup>The situation should not arise as between an applicant that is exempt from auctions and one that is not exempt. That is the reason for the creation of two pools of channels, the exempt pool being site-licensed and the non-exempt pool being territory-licensed.

This situation should be extremely rare, first, because private, exempt users in any given area are not numerous; and second, because the frequency coordination process precedes the filing of site-by-site license applications with the FCC. Nevertheless, should there be a situation where more applications are tendered than there are available channels, we suggest that they all be granted if they are otherwise in order and that the applicants be required to share the channels under whatever arrangement they can privately negotiate.

Although there are no existing users on these channels, the nature of site-by-site licensing nevertheless seems to require frequency coordination from the outset. All applications that are in order and that can be coordinated at their requested locations would be forwarded by the coordinators to the Commission with a recommendation for grant. As is the case today, when the channels available for use at a given location are exhausted, no more licenses can be coordinated or granted for systems at that location.

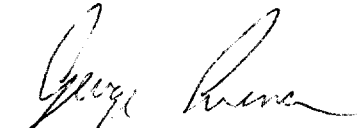
For any given location, the point may be reached when more applications are tendered to the coordinators than there are available channels. Whether that point is reached on the first day of licensing or a subsequent day, the procedure should be the same: all applications that reach the coordinators on the day when this situation is created will be granted the right to use the available channel or channels. For example, if two applications are filed for one remaining channel, then both applicants would be licensed to use the same channel. If ten applications are filed for three remaining channels, then these ten applicants would be given the right to share these three channels. The licensees themselves must then negotiate the terms of their sharing arrangement among themselves.

## Conclusion

The exhaustion of the available MAS channels in most parts of the country attests to the usefulness of this technology. For fifteen years, additional spectrum has been tantalizing America's public safety and infrastructure entities. For fifteen years, the vacant spectrum has been wasted. Now Congress has cleared away the last impediment to licensing, at least with respect to public safety and infrastructure entities. The public interest requires that the Commission see its way clear now to commence the licensing of new MAS systems in the 932/941 MHz band.

Respectfully submitted,

MICROWAVE DATA SYSTEMS, INC.



George Arena, President

January 30, 1998

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